

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1480V

Filed: April 8, 2016

Unpublished

LOU ANN BOERSCH,

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Petitioner,

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v.

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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*Richard A. Grimm, III, Magavern Magavern Grimm, LLP, Buffalo, NY, for petitioner.
Justine E. Walters, U.S. Department of Justice, Washington, DC, for respondent.*

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On December 7, 2015, Lou Ann Boersch (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act” or “Program”). Petitioner alleges that she developed a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving an influenza (“flu”) vaccination on September 24, 2010.³ Pet. at ¶ 8. The case was assigned to the Special Processing Unit (“SPU”) of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012)(Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ Petitioner previously filed a state court action in Erie County Supreme Court against Rite Aid on March 15, 2013, for the injuries she sustained as a result of her September 24, 2010, flu vaccination. Ex. 6. That civil action was dismissed on November 19, 2015. Ex. 7. Thereafter, the petition was timely filed in the Vaccine Program. See 42 U.S.C. § 300aa-11(a)(2)(B).

On April 7, 2016, respondent filed her Rule 4(c) Report in which she concedes that petitioner is entitled to compensation in this case. Rule 4(c) Rep. at 2. Specifically, respondent stated that a preponderance of the evidence establishes that petitioner's injury is consistent with SIRVA, and that the injury is not due to factors unrelated to her September 24, 2010, flu vaccination. *Id.* at 4. Respondent further stated that petitioner met all statutory and jurisdictional requirements, including having suffered the condition for more than six months. *Id.* at 5. Thus, respondent concludes that entitlement to compensation is appropriate under the terms of the Vaccine Act. *Id.*

In view of respondent's concession and the evidence of record, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master